

## 2001 DRAFTING REQUEST

### Bill

Received: 02/28/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Judith Robson (608) 266-2253

By/Representing: david

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - cigarettes and t.p.

Extra Copies:

Submit via email: NO

Requester's email:

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### Pre Topic:

No specific pre topic given

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### Topic:

Penalty for late payment of cigarette tax

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 03/01/2001	jdyer 03/02/2001		_____			State
/1			pgreensl 03/02/2001	_____	lrb_docadmin 03/02/2001		State
/2	jkreye 06/28/2001	jdyer 06/28/2001	pgreensl 06/29/2001	_____	lrb_docadmin 06/29/2001	lrb_docadmin 06/29/2001	

06/29/2001 06:41:46 PM

Page 2

Vers. .    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

7/5

<END>

03/02/2001 09:15:54 AM

Page 1

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**Instructions:**

See Attached

JACKET  
SLASH/2  
Joe

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FE Sent For:

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1?	jkreye	1 3/2 jld	3/2 pg	3/2 self			

FE Sent For:

&lt;END&gt;

The other would be to put in place a penalty provision for late payment of excise taxes on cigarettes. The attached document prepared by the Department of Revenue explains the issue more fully. Senator Robson will be submitting this bill on behalf of the department.

(I'm sending this second request to you since you handle taxation matters. If I should submit it to someone else, let me know.)

If you have any questions, please let me know. Also feel free to contact the department if you have questions during the drafting process.

Thanks,

David Austin  
Senator Robson's office  
6-2253



cig excise tax  
penalty.doc

**TITLE:** Create Late & Fraudulent Filing penalties for Cigarette Tax Returns

**SUMMARY OF RECOMMENDATION:**

Create a late filing penalty for cigarette tax returns as follows: 5% of the tax due if the return is not more than 1 month late, with an additional 5% penalty for each additional month late, not to exceed 25% of the tax due. Also, create a penalty of 50% of the tax due if a return is filed fraudulently or if a return is not filed, with the intent to defeat or evade the tax due. These penalties are similar to those for alcohol, tobacco, and fuel taxes.

**DESCRIPTION OF CURRENT LAW AND PROBLEM:**

The cigarette tax law in Chapter 139, Wis. Stats., does not contain the graduated 5-25% late-filing penalty found in the other excise tax laws (alcohol beverage, tobacco and fuel). Prior to September 1, 1993, cigarette taxes were paid when stamps were purchased from the department. There was no tax paid on the monthly report, therefore, no need for the penalty.

1993 Wis. Act 16 changed the collection of Wisconsin's cigarette taxes. Since September 1, 1993, cigarette taxes have been payable with the monthly cigarette tax returns (due the 15th day of the following month). The tax paid on late-filed cigarette tax returns should now be subject to the graduated 5-25% late-filing penalty in the same manner as tax paid on other late-filed tax returns.

The 50% fraudulent return penalty needs to be added to cigarette and tobacco products taxes so they are similar to the penalties imposed in other tax areas.

**ADMINISTRATIVE IMPACT:**

Adding the graduated 5-25% late-filing penalty to the cigarette tax law and the 50% false or fraudulent return penalty to cigarette and tobacco products tax law will make the penalty provision for all excise tax the same and result in equal administration of excise taxes.

**FISCAL IMPACT:**

Minimal.

**DRAFTING INSTRUCTIONS:**

Create sections 139.44(13) and (14).

139.44(13) FAILURE TO FILE RETURN. In case of failure to file any return required under s. 139.32 or 139.38 by the due date, unless it is shown that the failure was due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on that return 5% of the amount of that tax if the failure is for not more than one month, and an

additional 5% of the tax for each additional month or fraction thereof during which that failure continues, not exceeding 25% of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

139.44(14) FALSE OR FRAUDULENT RETURN. If a person fails to file a return when due or files a false or fraudulent return with intent in either case to defeat or evade the tax imposed by this subchapter, a penalty of 50% of the tax shall be added to the tax required to be paid, exclusive of interest and penalties.

Revise Section 139.85(1)

139.85 Interest and penalties. (1) The interest and penalties under s. 139.44(2) to (7) and (9) to (12 and (14) apply to this subchapter.

(2) If a person fails to file any return required under s. 139.77(1) by the due date, unless the person shows that that failure was due to reasonable cause and not due to neglect, the department shall add to the amount of tax required to be shown on that return 5% of the amount of the tax if the failure is for not more than one month and an additional 5% of the tax for each additional month or fraction of a month during which the failure continues, but not more than 25% of the tax. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of tax that is paid on or before the due date and by the amount of any credit against the tax that may be claimed on the return.

History: 1981 c. 20; 1987 a. 399; 1991 a. 39.

#### EFFECTIVE DATE AND/OR INITIAL APPLICABILITY:

Returns due on or after the first day of the second month beginning after publication.

#### DEPARTMENT OF REVENUE CONTACT PERSON:

Tom Reid, Revenue Tax Specialist  
(608) 266-8474

#### PREPARED BY:

John K. Nordlie, Section Chief  
Audit Bureau - Excise Tax Section  
(608) 267-3556



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-26727

JK:.....

JLD  
RM not  
run

3-1-01

D-N

AN ACT ...; relating to: late and false or fraudulent cigarette tax returns and providing a penalty.

*Analysis by the Legislative Reference Bureau*

Under current law, a person who is required to pay a liquor tax or a tobacco products tax and who fails to file a liquor tax or tobacco products tax return by the date that the return is due must pay a penalty equal to 5% of the tax that is due for every month or part of a month that the return remains outstanding, but not exceeding 25% of the tax that is due. If a person who is required to pay a liquor tax or a tobacco products tax fails to file a timely liquor tax or tobacco products tax return, or files a false or fraudulent return, with intent to evade the tax, the person must pay a penalty equal to 50% of the tax that is due. "Tobacco products" include cigars, pipe tobacco, and chewing tobacco, but not cigarettes.

Under current law, a person who is required to pay a cigarette tax and who fails to file a cigarette tax return by the date that the return is due must pay a penalty equal to 5% of the tax that is due for every month or part of a month that the return remains outstanding, but not exceeding 25% of the tax that is due. If a person who is required to pay a cigarette tax fails to file a timely cigarette tax return, or files a false or fraudulent return, with intent to evade the tax, the person must pay a penalty equal to 50% of the tax that is due.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*



1           **SECTION 1.** 139.44 (13) of the statutes is created to read:

2           139.44 (13) In case of failure to file any return required under s. 139.38 by the  
3           due date, unless it is shown that that failure was due to reasonable cause and not due  
4           to neglect, there shall be added to the amount required to be shown as tax on that  
5           return 5% of the amount of that tax if the failure is for not more than one month, and  
6           an additional 5% of the tax for each additional month or fraction of a month during  
7           which that failure continues, not exceeding 25% of the tax in the aggregate. For  
8           purposes of this subsection, the amount of tax required to be shown on the return  
9           shall be reduced by the amount of any part of the tax ~~which~~<sup>that</sup> is paid on or before the  
10          due date prescribed for payment of the tax and by the amount of any credit against  
11          the tax ~~which~~<sup>that</sup> may be claimed upon the return.

12          **SECTION 2.** 139.44 (14) of the statutes is created to read:

13          139.44 (14) If a person fails to file a return when due or files a false or  
14          fraudulent return with intent to defeat or evade the tax imposed by this subchapter,  
15          a penalty of 50% of the tax shall be added to the tax required to be paid, exclusive  
16          of interest and other penalties.

17          **SECTION 3.** 139.85 (1) of the statutes is amended to read:

18          139.85 (1) The interest and penalties under s. 139.44 (2) to (7) and, (9) to (12),  
19          and (14) apply to this subchapter. In addition, a person who violates s. 139.82 (8)  
20          shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned for not less  
21          than 90 days nor more than one year or both.

History: 1981 c. 20; 1987 a. 399; 1991 a. 39; 1999 a. 9.

22          **SECTION 4. Initial applicability.**

23          (1) This act first applies to returns that are due on the effective date of this  
24          subsection.

**SECTION 5. Effective date.**

(1) This act takes effect on the first day of the 2<sup>nd</sup> month beginning after publication.

(END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2672/1 dn

JK:1:...

Jld

Senator Robson:

Please review this draft carefully to ensure that it is consistent with your intent. Under current law, a person who is required to verify or sign a liquor tax return and who makes a false or fraudulent return is subject to a fine of not more than \$500 or imprisonment ~~or~~ not more than 30 days, or both. Do you want a similar provision that applies to the cigarette tax return?

Under current law, a person who aids another in making a false or fraudulent liquor ~~tax~~ <sup>for</sup> tax return is also subject to a fine of not more than \$500 or imprisonment ~~or~~ not more than 30 days, or both. Do you want a similar provision that applies to the cigarette tax return?

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2672/1dn  
JK:jld:pg

March 2, 2001

Senator Robson:

Please review this draft carefully to ensure that it is consistent with your intent. Under current law, a person who is required to verify or sign a liquor tax return and who makes a false or fraudulent return is subject to a fine of not more than \$500 or imprisonment for not more than 30 days, or both. Do you want a similar provision that applies to the cigarette tax return?

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Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

**Kreye, Joseph**

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**From:** Austin, David  
**Sent:** Thursday, June 28, 2001 10:50 AM  
**To:** Kreye, Joseph  
**Subject:** lrb 2672

Joseph:

For LRB 2672, you posed two questions in a drafter's note. The answer to both those questions is no. There appears to be a typographical error in the bill analysis. In the second paragraph, in the first sentence, it reads, "Under current law . . ." It seems like this should in fact say, "Under this bill . . ."

After you make that correction, can you please jacket both LRB 2672 and LRB 2671 for introduction in the Senate?

Thanks for your help.

David Austin  
Senator Robson's office



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2672/1

JK:jld:pg

RNR

2001 BILL

m 6-28-01

Regen

- 1 AN ACT *to amend* 139.85 (1); and *to create* 139.44 (13) and 139.44 (14) of the
- 2 statutes; **relating to:** late and false or fraudulent cigarette tax returns and
- 3 providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, a person who is required to pay a liquor tax or a tobacco products tax and who fails to file a liquor tax or tobacco products tax return by the date that the return is due must pay a penalty equal to 5% of the tax that is due for every month or part of a month that the return remains outstanding, but not exceeding 25% of the tax that is due. If a person who is required to pay a liquor tax or a tobacco products tax fails to file a timely liquor tax or tobacco products tax return, or files a false or fraudulent return, with intent to evade the tax, the person must pay a penalty equal to 50% of the tax that is due. "Tobacco products" include cigars, pipe tobacco, and chewing tobacco, but not cigarettes.

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this bill ✓

**BILL**

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# BILL

#### SECTION 4. Initial applicability.

(1) This act first applies to returns that are due on the effective date of this subsection.

**SECTION 5. Effective date.**

(1) This act takes effect on the first day of the 2nd month beginning after publication.

**(END)**